

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

MICHAEL C. YANCEY,

Plaintiffs,

9:17-cv-0381 (BKS/CFH)

v.

DOUGLAS ROBERTSON, *Corrections Officer,
Albany County Correctional Facility, f/k/a John
Doe,*

Defendant.

APPEARANCES:

Michael C. Yancey
16-A-4993
Mid-State Correctional Facility
P.O. Box 2500
Marcy, NY 13403
Plaintiff, pro se

Michael L. Goldstein, Esq.
Albany County Attorney's Office
112 State Street
Albany, NY 12207
Attorney for Defendant

Hon. Brenda K. Sannes, United States District Judge:

MEMORANDUM-DECISION AND ORDER

Plaintiff pro se Michael Yancey brought this action under 42 U.S.C. § 1983 against Defendant Douglas Robertson, a corrections officer at the Albany County Correctional Facility, alleging that Robertson was deliberately indifferent to Plaintiff's serious medical needs in violation of the Due Process Clause of the Fourteenth Amendment while Plaintiff was a pretrial detainee at the facility. (Dkt. No. 1). Defendant filed a motion for summary judgment on May 2, 2018. (Dkt. No. 44). Plaintiff responded to the motion, and also filed supplemental responses to

the motion. (Dkt. Nos. 46, 48, 50, 51). This matter was assigned to United States Magistrate Judge Christian F. Hummel who, on December 7, 2018, issued a Report-Recommendation and Order recommending that Defendant's motion for summary judgment be granted. (Dkt. No. 59). After thoroughly reviewing the record and the applicable law, Magistrate Judge Hummel concluded that Plaintiff had failed to provide evidence from which a jury could find that the delay in medical treatment was sufficiently serious to establish a constitutional claim or that the Defendant acted with deliberate indifference to the Plaintiff's medical needs. (*Id.*).

On December 26, 2018, Plaintiff filed a letter objection. (Dkt. No. 60). Defendant has responded to that objection, arguing that it was untimely, (Dkt. No. 61), and Plaintiff has filed a letter in response, (Dkt. No. 62). For the reasons set forth below, the Report-Recommendation is adopted in its entirety.

This court reviews *de novo* those portions of the Magistrate Judge's findings and recommendations that have been properly preserved with a specific objection. *Petersen v. Astrue*, 2 F. Supp. 3d 223, 228–29 (N.D.N.Y. 2012); Fed. R. Civ. P. 72(b) advisory committee's note to 1983 amendment. "A proper objection is one that identifies the specific portions of the [report-recommendation] that the objector asserts are erroneous and provides a basis for this assertion." *Kruger v. Virgin Atl. Airways, Ltd.*, 976 F. Supp. 2d 290, 296 (E.D.N.Y. 2013) (internal quotation marks omitted). Properly raised objections must be "specific and clearly aimed at particular findings" in the report. *Molefe v. KLM Royal Dutch Airlines*, 602 F. Supp. 2d 485, 487 (S.D.N.Y. 2009). "Even a pro se party's objections to a Report and Recommendation must be specific and clearly aimed at particular findings in the magistrate's proposal. . . ." *Machicote v. Ercole*, No. 06-CV-13320, 2011 WL 3809920 at *2, 2011 U.S. Dist. LEXIS 95351, at *4 (S.D.N.Y. Aug. 25, 2011) (citation omitted). Findings and recommendations as to which

there was no properly preserved objection are reviewed for clear error. *Molefe*, 602 F. Supp. 2d at 487.28 U.S.C. § 636(b)(1)(C).

Here, objections to the Report-Recommendation were due by December 24, 2018. (Dkt. No. 59). Although Plaintiff's objection was filed on December 26, 2018, it was dated December 20, 2018, and postmarked December 21, 2018. (Dkt. No. 60, at 1, 4). Under the prison mailbox rule, the objection was timely filed. *See Mannix v. Phillips*, 619 F.3d 187, 196 (2d Cir. 2010). Assuming that the prison mailbox rule applies to objections made to a report and recommendation, the Court deems the objection timely. *Id.*; *cf. Noble v. Kelly*, 246 F.3d 93, 97 (2d Cir. 2001).

In his objection, Plaintiff objects to the dismissal of the complaint, asks that the Court review the Report-Recommendation, and describes his ongoing medical conditions. (Dkt. No. 60). Plaintiff has not provided any specific objection to Magistrate Judge Hummel's Report-Recommendation, and this Court's review is therefore for clear error. Having reviewed the Report-Recommendation for clear error and found none, the Court adopts the Report-Recommendation in its entirety. Accordingly, it is hereby


ORDERED that Magistrate Judge Hummel's Report-Recommendation (Dkt. No. 59) is **ADOPTED** in all respects; and it is further

ORDERED that defendant's motion to dismiss (Dkt. No. 44) is **GRANTED** and plaintiff's complaint is **DISMISSED with prejudice**; and it is further

ORDERED that the Clerk serve a copy of this Order on the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: January 24, 2019
Syracuse, New York


Brenda K. Sannes
U.S. District Judge